SUPREME COURT, U.

No. 74-956

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MICHAEL RODAK, JR.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

BROOKLYN HEIGHTS PRESBYTERIAN CHURCH, an unincorporated ecclesiastical association, and BROOKLYN HEIGHTS PRESBYTERIAN CHURCH OF SAN DIEGO, INC., a California Corporation,

Petitioners,

vs.

THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated ecclesiastical association, and the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, INC., a Pennsylvania Corp., the TRUSTEES AND DIRECTORS OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, INC., THE PRESBYTERY OF SAN DIEGO, CALIFORNIA, an unincorporated ecclesiastical association, and PRESBYTERY OF SAN DIEGO, CALIFORNIA, INC., a California Corp., WILLIAM MACINNES, STATED CLERK OF THE DEFENDANT SAN DIEGO PRESBYTERY, WILLIAM P. THOMPSON, STATED CLERK OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, an unincorporated ecclesiastical association,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

I. QUESTIONS PRESENTED FOR REVIEW AND ISSUES RAISED IN REGARD TO WRIT OF CERTIORARI 1

A. Questions Presented For Review 1

B. Issues Raised In Regard To The Writ of Certiorari 2

II. STATEMENT OF THE CASE 2

A. Nature of The Action 2

B. Governing Documents of The Parties 3

III. ARGUMENT 5

A. The Court of Appeal Resolved The Issues On The Basis of State Law And Did Not Raise Issues of National Importance 5

B. Opinion of The Court of Appeal is Consistent With The Decisions of The United States Supreme Court And Does Not Present Any New Federal Questions 6

1. Beneficiaries of the Trust as persons in communion with the general denomination 6

2. The determination of the terms of the Trust does not violate the First Amendment prohibition against establishment of religion 8

3. The Court of Appeal did not make an improper inquiry into a religious polity 9

IV. CONCLUSION 11

TABLE OF CASES CITED

Page

Duncan Estate,
145 Cal.App.2d 612, 302 P.2d 892 (1956) 7

Irwin Estate,
6 Coffey's Probate Decisions (Calif.) 359 (1915) 7

Maryland and Virginia Eldership v. *Church of God at Sharpsburg,* 396 U.S. 367 (1970) 8, 9, 10

Pacific Home Mission v. *County of Los Angeles,*
41 Cal.2d 844, 264 P.2d 539 (1953) 5

Pearson's Estate,
113 Cal. 577, 45 P. 849 (1896) 7

Presbytery of Seattle v. *Rohrbaugh,*
79 Wash.2d 367, 485 P.2d (1971), *cert. den.*
405 U.S. 996 10

St. John Chrysostom Greek Catholic Church v. *Elko,*
436 Pa. 243, 259 A.2d 419 (1969), *cert. den.*
399 U.S. 920 10

Watson v. *Jones,*
80 U.S. (13 Wall.) 679 (1872) 7

Western Pennsylvania Conf. of Methodist Church v. *Everson Evangelical Church,*
312 A.2d 35 (Sup.Ct. Pa. 1973), app. dis.
Apr. 15, 1974, Docket No. 3197 10

Wheelock v. *First Presbyterian Church,*
119 Cal. 477, 51 P. 841 (1897) 5

TABLE OF STATUTES CITED

California Civil Code § 852 5

California Corporations Code § 10206 5

No. 74-356

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BROOKLYN HEIGHTS PRESBYTERIAN CHURCH, an unincorporated ecclesiastical association, and BROOKLYN HEIGHTS PRESBYTERIAN CHURCH OF SAN DIEGO, INC., a California Corporation,

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

QUESTIONS PRESENTED FOR REVIEW AND ISSUES RAISED IN REGARD TO WRIT OF CERTIORARI.

A. *Questions Presented For Review.*

The basic question presented for review by the Petition for Certiorari is whether or not the opinion of the California

Court of Appeal herein as modified violates the prohibitions of the First Amendment of the Constitution of the United States against the establishment of religion as made applicable to the states by the Fourteenth Amendment. The opinion of the Court of Appeal as modified is assailed by plaintiffs' on three grounds: (1) the opinion defines the beneficiaries of the trust referred to therein in such a way as to require that any such beneficiary remains in communion with the United Presbyterian Church in the United States of America; (2) the Court of Appeal stated that among the terms and conditions of the trust itself were the provisions of the Constitution of the United Presbyterian Church in the United States of America; and (3) the opinion of the Court of Appeal has the effect of probing deeply into the church polity to resolve a property dispute, thus again transgressing the First Amendment prohibition.

B. *Issues Raised In Regard To The Writ of Certiorari.*

Although it is unclear from the petition, it appears that the plaintiffs contend that the decision of the California Court of Appeal and the refusal to review the decision by the California Supreme Court are of concern to many Presbyterians across the country, and that the opinion of the Court of Appeal is not consistent with decisions of the United States Supreme Court. They may also be contending that the case presents a federal question not already passed upon by the United States Supreme Court.

II

STATEMENT OF THE CASE

A. *Nature of The Action.*

Plaintiffs, a California corporation and an unincorporated ecclesiastical association, sought injunctive and declaratory re-

lief in the trial court against higher bodies of the church government of which they were a part, as well as certain individual officers thereof. They sought to have the court declare that the higher bodies of the church government had no interest in or right of control over the property in their possession and under their control. They took this action in the civil courts without first taking any action nor seeking any relief within the church government and before they were subject to any action by the higher bodies of the church government.

The judgment of the trial court denying the injunction sought by plaintiffs and declaring that the subject property was held in trust for the benefit of the members of the general denomination was sustained in part and modified in part. The Court of Appeal sustained the trial court in its denial of the injunction and modified the declaratory judgment of the trial court to limit the class of beneficiaries to persons who were members of both the particular hurch of the plaintiffs and the general denomination. A comparative reading of the original decision of the trial court and the opinion of the Court of Appeal reveals that the modification of the trial court's judgment by the Court of Appeal should have no practical effect on the result. In either case the class of beneficiaries would be subject to the terms and conditions of the governing documents of the plaintiffs and of the general denomination, so that ultimately the individuals who enjoyed the direct benefits of the trust would be the same.

B. *The Governing Documents of The Parties.*

The governing document of the United Presbyterian Church in the United States of America which applies to all members of that denomination is its Constitution. The constitution is composed of the Book of Confessions and the Book or Order.

The Book of Order in turn is composed of the Directory for Worship, the Form of Government and the Book of Discipline. Only the Form of Government and the Book of Discipline have been alluded to from time to time in the litigation of this matter. Many of the relevant passages are quoted or referred to in the opinion of the Court of Appeal attached as Appendix "B" to the plaintiffs' Petition for Certiorari. The only passages which were alluded to at any time during litigation pertain to the structure of the government of the general denomination or to provisions respecting church property.

The Brooklyn Heights Presbyterian Church of San Diego, in its corporate form, is governed by Articles of Incorporation and Bylaws. The Articles of Incorporation [Exhibit 1 in the California State Courts] provide in pertinent part:

> . . . the purposes for which this corporation is formed are to establish and make suitable provision for the worship of almighty God according to the doctrine, discipline, government, tenents and practice taught and authorized by the General Assembly of the Presbyterian Church of the United States of America; [predecessor of one of the defendants herein]; . . . to acquire by purchase, gift, lease or otherwise all real and personal property as may be necessary or convenient for its object, and purpose and to build or construct church building or buildings, parsonage or residences for the use and occupation of its pastor or preacher, or its teachers or agents, and to build or construct any other building or structure necessary or convenient for the use of said corporation or which may be needed by said corporation in the administration and accomplishment of the objects and purposes aforesaid; and to buy, hold, sell, mortgage, hypothecate or pledge, lease or let its property according to law; and do all the things necessary and incident to carrying out of said purposes.

The Bylaws of the corporate plaintiff [Exhibit 4 in the California State Courts] provide in their preamble as follows:

> Brooklyn Heights Presbyterian Church, being a particular congregation of the United Presbyterian Church in the United States of America, recognizes that the Constitution of said church is, in all its provisions obligatory upon it and its members.

Other provisions of the Bylaws of the Brooklyn Heights Presbyterian Church are consistent with and frequently refer to the Constitution of the general denomination.

III
ARGUMENT

A. *The Court Of Appeal Resolved The Issues On The Basis Of State Law And Did Not Raise Issues Of National Importance.*

The opinion of the Court of Appeal as set forth in the Appendix "B" of plaintiffs' Petition for Certiorari makes it clear that it determined the existence of the trust and the description of the beneficiaries based on California state legislation. The court held that:

> Under California law the local church is classified as a charitable corporation. All assets received by such a charitable corporation are deemed to be impressed with a charitable trust by virtue of the corporation's express declaration of purposes, notwithstanding the absence of any express declaration by the donors of the assets. (Corp. Code § 10206; Civ. Code § 852; *Wheelock* v. *First Presby. Church,* 119 Cal. 477, 483; *Pacific Home* v. *County of Los Angeles,* 41 Cal.2d 844, 852).

The Court of Appeal goes on to analyze Section 10206 of the California Corporations Code and to interpret the governing documents of the plaintiff corporation and the general denomination to determine the class of persons who are the beneficiaries of the trust under the California law. The court then cites California cases in support of its position that the beneficiaries of the

trust are those members of the plaintiffs' congregation who are in communion with the general denomination.

It is clear from the foregoing that the opinion of the Court of Appeal is based on California state law and as such is not a matter of national significance. The only question remains whether the decision based on state law is consistent with previous decisions of the United States Supreme Court or whether it raises a federal question not previously decided by that body.

B. *The Opinion Of The Court Of Appeal Is Consistent With The Decisions Of The United States Supreme Court And Does Not Present Any New Federal Questions.*

1. Beneficiaries of the trust as persons in communion with the general denomination.

The use of the term "in communion with" by the California Court of Appeal apparently had the same effect upon the plaintiffs' sensitivity to the First Amendment prohibition against the governmental establishment of religion as the bullfighter's waving of a cape has upon the bull's sensitivity to the perception of red. However, the term was not used by the Court of Appeal in making some determination regarding religious doctrine, discipline, or practice, but was rather used in the sense of "membership." Thus, when the Court of Appeal defined the beneficiaries of the trust as those members of Brooklyn Heights Presbyterian Church who are recognized by the General Assembly of the United Presbyterian Church in the United States of America as being in communion with that denomination, what the court was saying, in effect, was that the beneficiaries were members of the Brooklyn Heights Presbyterian Church who were also members of the general denomination as determined by the general denomination.

In so defining the beneficiaries the Court of Appeal was mak-

ing no more of a determination of ecclesiastical issues than other civil courts which have in the past defined the beneficiaries of a trust as members of a non-religious organization. (See, e.g., *Pearson's Estate,* 113 Cal. 577 (1896) (Orphan's Asylum); *Duncan Estate,* 145 Cal.App.2d 612 (1956) (Motion Picture Relief Fund); *Irwin Estate,* 6 Coffey's Probate Decisions (Calif.) 359 (1915) (General Charitable Trust)). The Court of Appeal made no determination of what individuals would qualify or of what any individual must do to qualify as a member of the general denomination.

The concern of the Court of Appeal in its particular designation of the beneficiaries of the trust derives from the type of case which has occasionally reached the United States Supreme Court in which some segment of a hierarchically structured religious body has attempted to break away from the superior organization; and its opinion is entirely consistent with the opinions of the United States Supreme Court in those cases. The leading case decided by the United States Supreme Court on the question of a schism in the church organization is *Watson* v. *Jones,* 80 U.S. (13 Wall.) 679 (1872). In that case as in the present the determination of the rightful enjoyment of the benefit of the trust in question was left to "the highest . . . church judicatories to which the matter has been carried. . . ." In the present case the California Court of Appeal simply stated there was a necessary connection between the right to enjoyment of the property and the general denomination. Thus it limited the beneficiaries to those persons in communion with (members of) the general denomination who were also members of the particular church.

Not only did the opinion of the California Court of Appeal not make a determination of ecclesiastical questions, it did not compel anyone to maintain or alter their religious belief or their

association with any particular religious body. The beliefs of any persons affected by the decision of the Court of Appeal and their connection with any particular religious body was and is purely a matter of personal choice. The Court of Appeal only defined, in the context of the civil dispute over property, which persons were entitled to the benefits of the use of such property, and the basis of that determination had long before been set forth in the various documents of the ecclesiastical organization with which the plaintiffs voluntarily associated.

2. The determination of the terms of the trust does not violate the First Amendment prohibition against establishment of religion.

The California Court of Appeal held that the trust in question was

> subject to the management and control of the session of the Brooklyn Heights Church in accordance with its own governing documents and further subject to the limitations concerning the use and holding of local church property which are contained in the written constitution of the United Presbyterian Church in the United States of America.

The approach of resorting to such documents was approved by the United States Supreme Court in the case of *Maryland and Virginia Eldership* v. *Church of God at Sharpsburg*, 396 U.S. 367 (1970) wherein the court held at pages 396 and 397:

> . . . the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the general eldership pertinent to the ownership and control of church property.

> . . . The Maryland court's resolution of the dispute involved no inquiry into religious doctrine. . . .

As the opinion of the California Court of Appeal did not go beyond the same type of sources as listed with approval by the United States Supreme Court in the *Maryland and Virginia Eldership* case, it is clear that this aspect of the opinion is consistent with prior decisions of the United States Supreme Court, and raises no new issues which have not been considered by that court.

3. The Court of Appeal did not make an improper inquiry into a religious polity.

As explained above, the Court of Appeal confined its inquiry to documents and considerations entirely consistent with previous opinions of the United States Supreme Court. The plaintiffs complain, however, that the reliance of the Court of Appeal upon such documents and the holding that plaintiffs are bound by terms and conditions to which they voluntarily agreed

> necessarily has the effect of permitting "civil courts to probe deeply into the allocation of power within a church so as to decide where religious law places control over the use of church property." In so doing [the Court of Appeal] violates the First Amendment in "much the same manner as civil determination of religious doctrine." *Maryland and Virginia Eldership of Church of God* v. *Church of God (Sharpsburg)*, 396 U.S. 367, 369 (90 S.Ct. 499, 500-501). (See Plaintiffs' Petition for Certiorari, pages 13-14.)

Plaintiffs' reliance on the *Maryland and Virginia Eldership* case is misplaced since that case approved the approach taken by the state courts in this case in their examination of the governing documents of the parties. Furthermore, the holding of the Court of Appeal was arrived at through the application of

"neutral principles" of California state law in determining the terms of the trust. The Court of Appeal did not attempt to resolve doctrinal questions or to make an extensive inquiry into religious polity. (*Maryland and Virginia Eldership* v. *Church of God at Sharpsburg*, 396 U.S. 367, 370 (1970)).

The principle that state courts are free to apply similar precepts of state law in deciding property disputes of religious bodies has been affirmed by the United States Supreme Court in its recent denials of review. (See, e.g., *Presbytery of Seattle* v. *Rohrbaugh*, 79 Wash.2d 367, 485 P.2d 615 (1971), cert. den. 405 U.S. 996; *St. John Chrysostom Greek Catholic Church* v. *Elko*, 436 Pa. 243, 259 A.2d 419 (1969), cert. den. 399 U.S. 920; *Western Pennsylvania Conf. of Methodist Church* v. *Everson Evangelical Church*, 312 A.2d 35 (Sup.Ct. Pa. 1973), app. dis. Apr. 15, 1974, Docket No. 3197).

IV

CONCLUSION

The defendants herein submit that no questions of national importance are raised by the issues presented for review in plaintiffs' Petition for Certiorari and further than no new federal question or issue inconsistent with prior opinions of the United States Supreme Court are submitted thereby.

Defendants therefore respectfully urge the denial of the petition for certiorari.

Respectfully submitted,

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